

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 1344 of 2004

Manohar Singh Rawat & others.
Vs

Akshay Kumar and others.

Approved for reporting

~~Not approved for reporting~~

Date of decision 21.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1344 (MS) OF 2004

1. Manohar Singh Rawat,
S/o Sri Gyan Singh Rawat,
R/o Defence Colony, Roorkee,
District-Haridwar.
2. Mahendra Singh Bisht,
S/o Sri Padam Singh Bisht,
R/o 68, Ashok Nagar, Dandera,
Pargana & Tehsil Roorkee,
District – Haridwar. Petitioners.

Versus

1. Akshya Kumar, S/o Samaya Singh,
2. Beer Singh, S/o Isam Singh,
3. Atul Kumar (minor), S/o Vikram Singh, through his
Guardian Smt. Sushila Devi, W/o Vikram Singh,
4. Sushila Devi, W/o Sri Vikram Singh,
5. Anil Kumar, S/o Isam Singh,
All resident of Ashaf Nagar, Pargana & Tehsil, Roorkee,
District-Haridwar.
6. Sharan Singh, S/o Dharam Singh,
R/o 32 Awas Vikas Colony, Roorkee,
7. Smt. Sunita Devi, W/o Swaraj,
R/o 243/4 Purva Din Dayal,
Roorkee, Haridwar. Respondents.
8. Ratan Singh, S/o Sahi Ram,
9. Chattar Singh, S/o Sahi Ram,
10. Usha Devi, W/o Tej Singh,
11. Satish Kumar, S/o Samay Singh,
12. Nawab Singh, S/o Isam Singh,

13. Baldhir Singh, S/o Narayan Singh,
All R/o Village Ashaf Nagar, Pargana & Tehsil – Roorkee,
District-Haridwar.
14. Smt. Siksha Panwar, W/o Gaje Singh, R/o 390 Awas
Vikas Roorkee.
15. Narendra Kumar, S/o Jagdish Sharan, R/o Civil Lines,
Roorkee.
16. Jeetendra Kumar, S/o Jagdish Sharan Court Road,
Saharanpur.
17. Gram Sabha, Gram Ashaf Nagar, Pargana & Tehsil –
Roorkee, District-Haridwar. Performa Respondents.
18. Deputy Director of Consolidation/Additional Collector,
Haridwar. Respondents.

Dated: 21.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri A.K. Sharma, Advocate for the petitioners
and Standing Counsel for the respondent no. 18.

2. By the present writ petition, the petitioners have
prayed for a writ of certiorari quashing the orders dated
26.08.2003 and 30.11.2004 passed by the Deputy Director of
Consolidation/Additional Collector.

3. Briefly stated, according to the petitioner no. 1, he
has purchased Chak No. 299 Gata No. 275 the share of $\frac{1}{4}$
0.307 hectare on 19.06.2000 from the Ratan Singh and
mutation has been done by the A.C.O. on 25.8.2001. Similarly,
petitioner no. 2 purchased the Check No. 299, Gata No. 275 the
share of $\frac{1}{4}$, 0.307 hectare on 12.5.2000 from the Ratan Singh
and mutation has been done by the A.C.O. on 25.08.2001.

4. Respondent no. 14 preferred an appeal on 695 against the order dated 29.11.2000 against one Narendra and some others in the Court of Settlement Officer of the Consolidation, stating that Rakba of Chak No. 299 may be reduced from the southern side and the same may be extended in the eastern side. The same was allowed on 15.02.2003. In this appeal, petitioner was not made party.

5. Against the said order, nine revisions being revisions No. 363/2002-2003, 360/2002-03, 362/2002-03, 365/2002-03, 410/2002-03, 359/2002-03, 361/2002-03, 364/2002-03, 366/2002-03 were filed by Sri Beer Singh, Anil Kumar, Akshya Kumar, Smt. Sushila Devi and her son Atul Kumar (minor), Sunita Devi, Nawab Singh, Satish Kumar, Chattar Singh and Smt. Usha Devi. The aforesaid revisions were heard together. Out of the aforesaid revisions four revisions namely 359, 361, 364, 366 were dismissed on 26.08.2003 and five revisions namely 363, 360, 362, 365 and 410 were allowed on 26.08.2003. The petitioners were not made party in the aforesaid revisions.

6. Petitioners have submitted that they had no knowledge about the aforesaid orders, however, on 15th October, 2003, for the first time, they came to know while the Consolidation Staff came to make measurement and they told the petitioners that their Chaks have been changed.

7. On 24th October, 2003, the petitioners filed restoration application against the order dated 26.08.2003 along with affidavit, stay application, Section 5 application

along with its affidavit. The same was rejected on 30th November, 2004 and confirmed the order dated 26.08.2003.

8. The grievance of the petitioners is that they were not made parties before the Deputy Director of Consolidation/Additional Collector.

9. **The apex Court in the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and others 2002 Supreme Court & Full Bench Rent Case, Page 440** has held as under:-

“The expression ‘sufficient’ cause’ within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the ‘Act’) Order XXII, Rule 9 of the Code of Civil Procedure (hereinafter referred to as ‘the Code’) as well as similar other provisions and the ambit of exercise of powers there under have been subject matter of consideration before this Court on numerous occasions. In the case of State of West Bengal v. The Administrator, Howrah Municipality and others (1972) 1 Supreme Court Cases 366, while considering scope of the expression ‘sufficient cause within the meaning of Section 5 of the Act, this Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.”

10. The need of society is that there should be justice oriented approach and the matter should not be rejected only on the ground of technicalities. The Apex Court has *held in*

(2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood
as under:-

“ Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.”

11. In **N Balakrishnan Vs. M. Krishnamurthy, 1998 S.C.F.B. and Rent Cases Pages 427**, It has been held that law of limitation is founded in public policy on ‘*the maxim of interest reipublicae up sit finis litium*’ i.e. for the general welfare, it has been held as under:-

“The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.”

“Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer cause would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life spent must be

fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time”.

“It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation”.

12. In view of the aforesaid, right of the petitioners cannot be forfeited on the ground of delay. The hearing on the lis being mandatory, one should not be deprived of hearing and the matter has to be decided on merits.

13. Relying upon the cases of **R.V. Camborne Justices All England Law Reports (2) 850**, it has been

held in ***International Airports Authority of India Vs. K.D. Bali (1988) 2 SCC 360*** as under:-

“While indorsing and fully maintaining the integrity of the principle ‘justice should not only be done, but should manifestly be seen to be done’, it is important to remember that the principle should not be done than it should in fact be done.”

Law Lexicon defines ‘justice’ as under:-

“Justitia est constans et perpetua voluntas just suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right”

14. Taking into consideration that the parties should get substantial justice, it is desirable in the interest of justice that the restoration application has to be allowed and the case has to be heard on merits.

15. In view of the above, a writ of certiorari is issued quashing the orders dated 30.11.2006 and 26.08.2006. The matter is sent back to the Deputy Director of Consolidation for deciding the case of the petitioners on merits after impleading them as parties.

16. Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21.08.2006

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